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Federal Communications Commission

DA 98-154

DISPATCHED

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.606(b), ) MM Docket No. 97-170  
Table of Allotments, ) RM-8980  
TV Broadcast Stations. )  
(San Bernardino and Long Beach, California) )

REPORT AND ORDER  
(Proceeding Terminated)

Adopted: January 14, 1998

Released: January 30, 1998

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making* ("Notice"), 12 FCC Rcd 11410 (1997), issued in response to a petition for rule making filed on behalf of KSLS, Inc. ("petitioner"), licensee of Station KSCI(TV), Channel 18-, San Bernardino, California, proposing the reallocation of Channel 18- from San Bernardino to Long Beach, California, as that community's first local television transmission service, and modification of its authorization accordingly.<sup>1</sup> Petitioner filed supporting and reply comments in response to the *Notice*. The City of Long Beach ("City") filed late comments.<sup>2</sup> No other comments were received. For the reasons discussed below, we are reallocating Channel 18- from San Bernardino to Long Beach and are modifying the authorization of Station KSCI(TV) to specify Long Beach, California, as its community of license.

Background

2. As stated in the *Notice*, the instant petition for rule making was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license, without affording other interested parties an opportunity to file competing expressions of interest, where the requested allotment would be mutually exclusive with the existing authorization. Further, to permit such a

<sup>1</sup>A television station with a "+" or "-" offset is required to operate with its carrier frequency 10 kHz above or below, respectively, the normal carrier frequency. A different offset between two television stations reduces interference and makes possible the separation criteria set forth in our Rules.

<sup>2</sup>The City comments are one day late. In a motion for leave to file late comments, City claims that due to unforeseeable circumstances the messenger arrived at the Commission Secretary's office shortly after it closed. We will accept the comments. In addition to the fact that the petitioner does not object to the acceptance of these comments, acceptance will not delay resolution and enable us to resolve this proceeding on the basis of a complete record without prejudice to either party.

modification pursuant to Section 1.420(i), the proposal must result in a preferential arrangement of allotments. See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In evaluating television reallocation proposals, we apply the television allotment priorities set forth in the *Sixth Report and Order* in Docket Nos. 8735 and 8975, 41 FCC 148, 167 (1952).<sup>3</sup> In this instance, Petitioner's proposal is mutually exclusive with its existing authorization at San Bernardino as no relocation of the transmitter site for Station KSCI(TV) was proposed. In further support of the proposed reallocation, petitioner urges that adoption of its proposal would result in a preferential arrangement of allotments (*Change of Community R&O* at 4873), as it would provide a first local television transmission service to the significantly larger community of Long Beach (population 429,433)<sup>4</sup> while San Bernardino (population 164,164) would retain two television stations.<sup>5</sup>

3. The *Notice* also recognized that although this proposal involves a move from the Riverside-San Bernardino Urbanized Area to the Los Angeles Urbanized Area, it is not considered a migration to the latter area as Station KSCI(TV) presently provides city grade service to Long Beach, as well as to most of the urbanized area from its existing site.<sup>6</sup> Therefore, the petitioner was not required to submit a Tuck analysis to demonstrate that Long Beach is sufficiently independent of the Los Angeles Urbanized Area to merit a first local television service preference.<sup>7</sup> See *Notice* at para. 6.

4. In its comments, City notes that petitioner's programming will focus on the Asian American and other ethnic populations in Long Beach. In regard to the proposal, City has no dispute with the overall objectives advanced by the petitioner, but does express concern that the

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<sup>3</sup>These priorities are as follows: (1) to provide at least one television service to all parts of the United States; (2) to provide each community with at least one television broadcast station; (3) to provide a choice of at least two television services to all parts of the United States; (4) to provide each community with at least two television stations; and (5) assign any channels remaining to communities based on population, geographical location, and the number of television services available to the community from television stations located in other communities.

<sup>4</sup>Population figures reported herein were taken from the 1990 U.S. Census.

<sup>5</sup>As reported in the *Notice*, petitioner presently provides Asian programming service to a minority percentage (4%) of San Bernardino's population. The reallocation proposal would result in the provision of such programming service to a substantially larger percentage (13.6%) of the Asian community in Long Beach.

<sup>6</sup>According to a staff engineering analysis, from the existing site of Station KSCI(TV), the reallocation proposal will provide the following dimension of coverage of the Los Angeles Urbanized Area:

City grade contour (80 dBu)	-	80%
Grade A contour (74 dBu)	-	97%
Grade B contour (64 dBu)	-	100%

<sup>7</sup>See *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc.*, 5 FCC Rcd 3222 (1990); and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

petitioner adequately serve the community interests of Long Beach as a whole, consistent with the primary obligations of all licensees to serve the needs and interests of their licensed community. In a related vein, City states that it would be supportive of having a second television station assigned to Long Beach to serve other populations. To this end, City does not oppose the reallocation provided it will not prejudice any future new allotment to Long Beach.

5. As stated in the *Notice*, the Commission has imposed a temporary freeze on the acceptance of petitions for rule making to amend the TV Table of Allotments in certain metropolitan areas, including Los Angeles. However, the requested reallocation of Channel 18- from San Bernardino to Long Beach, California, is not within the ambit of the freeze because it is a proposal by an existing station with no change in transmitter site. See *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, Order, RM-5811, 52 Fed. Reg. 28,346, July 29, 1987. Moreover, this proposal also falls under the exceptions to the subsequent action in the *Sixth Further Notice of Proposed Rule Making* ("*Sixth Further Notice*") in the digital television ("*DTV*") proceeding, 11 FCC Rcd 10968 (1996), which suspended the filing of proposals to amend the TV Table of Allotments to add an allotment for a new NTSC station.<sup>8</sup> The exceptions specifically included a change in community of license. In any event, the Commission stated that any resultant changes to the table that include a modification of a station's authorization would be conditioned on the outcome of the DTV rule making proceeding. *Sixth Further Notice* at paragraph 61. As noted earlier, this proposal does not result in a new allotment but merely the reallocation of an existing allotment with no change in the transmitter site, and will have no impact on the draft DTV allotment table. See *Sixth Further Notice*, *supra*, at 10992.

6. Based upon the information presented, we believe the public interest would be served by reallocating Channel 18- from San Bernardino to Long Beach, California, since it would provide the latter community with its first local television transmission service without depriving San Bernardino of local television service.<sup>9</sup> Channel 18- can be allotted to Long Beach consistent with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules utilizing the petitioner's currently authorized transmitter site located 64.2 kilometers (39.9 miles) northeast of Long Beach at coordinates 34-11-15 and 117-41-54.<sup>10</sup>

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<sup>8</sup>In the *Sixth Further Notice*, the Commission expressed concern that "freezing modifications to existing NTSC stations could pose hardships for broadcasters." Moreover, the Commission stated that "in many cases it may be possible to permit modification of existing stations without affecting the DTV Table."

<sup>9</sup>Although petitioner apparently intends to provide programming geared to the varied minority population of Long Beach, with particular emphasis on the Asian segment of the community, petitioner is aware that its primary obligation is to serve the overall needs and interests of its licensed community. See Section 73.1120 of the Commission's Rules.

<sup>10</sup>Although Long Beach is located within 320 kilometers (199 miles) of the Mexican border concurrence of the Mexican government to the reallocation of Channel 18- to Long Beach is not required since Station KSCI(TV) is not changing its assigned channel of operation or relocating its transmitter site. However, as a result of the grant of this

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 16, 1998, the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
San Bernardino, California	*24-, 30
Long Beach, California	18-

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of KSLs, Inc. for Station KSCI(TV), Channel 18-, San Bernardino, California, IS MODIFIED to specify operation on Channel 18- at Long Beach, California, in lieu of San Bernardino, California, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

9. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, KSLs, Inc., licensee of Station KSCI(TV), is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license at Long Beach, California.

10. IT IS FURTHER ORDERED, that the Secretary SHALL SEND a copy of the Report and Order by Certified Mail, Return Receipt Requested, to the following:

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proposal, we will advise the Mexican government of the change to the TV Table of Allotments.

KSLS, Inc.  
12401 West Olympic Blvd.  
Los Angeles, CA 90064  
(Licensee of Station KSCI(TV))

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau